

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

CARLOS VEGA	:	CIVIL ACTION
and	:	
JOSEPH WHITEHEAD, JR.	:	NO. 19-4039
	:	
Plaintiffs,	:	JURY TRIAL DEMANDED
v.	:	
	:	
CITY OF PHILADELPHIA	:	
and	:	
LAWRENCE S. KRASNER	:	
Defendants.	:	

PLAINTIFFS' PRETRIAL MEMORANDUM

I. NATURE OF ACTION AND BASIS FOR JURISDICTION

Plaintiffs, Carlos Vega (“Vega”) and Joseph Whitehead, Jr. (“Whitehead”), join in bringing this action alleging age discrimination against their former employer, the City of Philadelphia (“City”), and Lawrence Krasner (“Krasner”), who currently serves as District Attorney for the City. Plaintiffs allege that they were fired by the City and Krasner on January 5, 2018, because of their age. The action is brought pursuant to the Age Discrimination in Employment Act of 1967, 29 U.S.C. §621 et seq. (“ADEA”), and the Pennsylvania Human Relations Act, 43 P.S. §951 et seq. (“PHRA”). The Court has jurisdiction over Plaintiffs’ ADEA claims pursuant to 28 U.S.C. §1331 and 29 U.S.C. §626(c)(1). The Court has supplemental jurisdiction over Plaintiffs’ PHRA claims pursuant to 28 U.S.C. §1367(a).

II. SUMMARY OF FACTS SUPPORTING PLAINTIFFS' CLAIMS

Vega and Whitehead had long, successful and distinguished careers with the City as prosecutors with the District Attorney's Office ("DAO"), which spanned thirty-five

(35) years in the case of Vega and twenty-eight (28) years in the case of Whitehead. From 1987 until the time of his firing in January 2018, Vega was assigned to the elite Homicide Unit of the DAO. In that role, Vega did exemplary work on behalf of the public, was highly respected among his colleagues and supervisors as well as members of the criminal defense bar and the judiciary, and successfully handled many of the most complex and difficult homicide cases. Whitehead was assigned to the Homicide Unit in 2014, and he too was an integral part of that key unit until he was fired in January 2018. Prior to being transferred to the Homicide Unit, Whitehead had worked in a variety of important positions for the City and the DAO, and he had performed the job duties of all of his assignments at a high level, earning the respect and admiration of supervisors, peers, defense lawyers, and judges. Vega and Whitehead, true credits to their profession, were dedicated public servants who devoted their professional careers to serving the public and promoting the administration of justice. At no time during their long tenures with the City was any disciplinary action ever taken against either of them. As of January 2018, Vega was sixty-one (61) years of age, and Whitehead's age was sixty-four (64).

In February of 2017, Krasner announced his candidacy for DA of the City, and in May 2017, he won the Democratic primary. After winning the primary, when it became apparent that he would become the next DA, Krasner made a series of public statements that reflected his bias against and stereotypical views of older prosecutors like Plaintiffs, who had worked in the DAO for a long time, and his strong preference and affinity for young prosecutors. For example, in one interview, Krasner proclaimed that as DA, he could not "bring about real change and leave people in place who are

going to fight change every step of the way,” that “[t]he ones who will leave will tend to be my generation, people who started in this business thirty (30) years ago, which means they’ll also tend to be white and male,” and that “the office will be a tremendous magnet for new talent.” Plaintiffs, who had worked in the administrations of several DAs, had never manifested any intention or desire to “fight change.” In fact, they had adapted seamlessly to the policies of each incoming DA. In another pre-election interview, given in October 2017, Krasner boldly asserted that “there is no question that the old guard in that office [the DAO] is in control and the old guard in that office is not desiring change at all,” and that “that crowd needs to go” and should “get out of the way.” In yet another interview given in October 2017, Krasner announced that, if elected, he “expect[ed] to have very broad support among the vast majority of the young prosecutors who are in there,” and that it was “more of a generational issue as I see it.”

As expected, on November 7, 2017, Krasner won the election for DA, and on Tuesday, January 2, 2018, he was sworn into office. Thereafter, he wasted little time implementing his plan to fire a group of older prosecutors who had worked in the DAO for many years, based on his preconceived but false notion that they were too set in their ways and would resist change. On Friday, January 5, 2018, Krasner directed that thirty (30) attorneys at the DAO, including Plaintiffs, be informed that he was demanding their resignations that day, and that they would be fired if they did not resign. Of the thirty (30) lawyers whose resignations were demanded, twenty (20) were over the age of forty (40), and eleven (11) of the twenty (20) were above the age of fifty (50). The average age of the thirty (30) attorneys who were forced out was 45.7.

Consistent with Krasner's directive, Vega and Whitehead were informed by the City on January 5, 2018 that Krasner wanted their resignations, and that they would be fired if they refused to resign. When Plaintiffs advised the City that they would not resign, they were instructed to clear out their offices and to leave the building that day. They were given no reason or explanation for Krasner's decision to fire them, and Krasner never contacted or met with them to explain his rationale. Nor did Krasner document the reasons for his decisions. Furthermore, Krasner never looked at Plaintiffs' performance appraisals – which were excellent – nor did he speak with any of Plaintiffs' supervisors at the DAO – who would have strongly supported Plaintiffs and opposed any attempt to force them out. In addition, when Defendants ousted Plaintiffs from the DAO, Krasner decided to retain, in the Homicide Unit, a group of substantially younger, less experienced lawyers, many of whom Vega had mentored and trained. Moreover, within days of the firing of Plaintiffs, Defendants transferred five much younger, less experienced prosecutors to the Homicide Unit from other units, where they had not handled homicide cases. Consistent with his favoritism of young prosecutors, from July 2018 to September 2019, Krasner recruited and hired 138 lawyers to work in the DAO, 127 of whom were under the age of forty (40), and eight-eight (88) of whom were between the ages of twenty-five (25) and thirty (30).

In response to Plaintiffs' PHRC Complaints and a request by the PHRC that he set forth the specific reasons for firing Plaintiffs, Krasner provided an identical verified statement for each Plaintiff in which he asserted, generally, that he had performed what amounted to a thirty (30) year job interview of each Plaintiff, during which time he had an opportunity to observe and assess them, and to speak to others about them.

However, no individuals with whom Krasner allegedly spoke were identified in the verified PHRC statements; and Krasner later acknowledged that he did not seek input from any of Plaintiffs' supervisors at the DAO before he made the decision to fire them. Nearly two years after he had submitted the PHRC statements, Krasner shifted course and asserted, in the litigation, specific events he which claimed caused him to get rid of Plaintiffs. For Vega, Krasner stated in the litigation that he based his decision on Vega's alleged misconduct in connection with a triple homicide case in which Krasner represented one of two defendants, where both defendants were convicted of three counts of first degree murder. The convictions and sentences were affirmed on appeal and the trial judge and the Superior Court of Pennsylvania rejected all claims of prosecutorial misconduct. For Whitehead, Krasner asserted in the litigation that his decision was based primarily on Whitehead's alleged unduly harsh sentencing recommendations for juveniles who had committed murders and whose life sentences had to be reviewed under a decision of the Supreme Court of the United States. Whitehead's recommendations had to be reviewed and approved by a committee that included his supervisors, and most were accepted by defense counsel and the courts. Plaintiffs strongly dispute the veracity and credibility of the after-the-fact, litigation-based explanations proffered by Krasner, which were never mentioned when Plaintiffs were fired or to the PHRC in Krasner's verified statements. Furthermore, Krasner's recently asserted reasons for firing Whitehead are based largely upon information he was unaware of in January 2018.

III. SUMMARY OF PLAINTIFFS' MONETARY DAMAGES

A. Plaintiff Vega

Vega's economic losses, past and future, have been calculated by his damages expert to be **\$609,682**. This figure includes lost wages from January 2018 through November 2021; loss of the value of benefits under the City's DROP program; and loss of the value of employer-provided health benefits.

By way of background, on November 21, 2017, Vega enrolled in the City's DROP program. In doing that, he agreed unconditionally to voluntarily retire from his employment with the City in four years, in November of 2021, in exchange for receiving a lump sum payment at the time of his retirement in the amount of approximately \$485,000. When a City employee enters the DROP program, their pension is frozen and monthly pension benefits are paid into a DROP account, so that a lump sum, including interest, is paid at the time of the agreed upon retirement date. In Vega's case, he expected the monthly benefits to be paid into the account from November 2017 until November 2021, at which time he would receive the lucrative lump sum.

Vega was sixty-one (61) years of age at the time he was fired in January 2018, only two months after he had entered the DROP program. At that time, he was earning an annual salary from the City of \$143,000. Notwithstanding his reasonable efforts to mitigate and to find comparable or substantially equivalent employment, Vega has been unemployed with no employment-related income from January 2018 to the present. In addition, it is not expected that Vega will be able to obtain comparable or substantially equivalent employment between now and November 2021. Vega's damages expert has determined, based upon Vega's annual earnings from the City, that from January

2018 through September 2020 (when the expert's report was completed), Vega had suffered a loss of income (back pay) in the amount of \$387,387. The expert further determined that from September 2020 to November 2021, Vega will suffer an additional loss of income (front pay) of \$157,795 (after reduction to present value). This yields a total wage loss from January 2018 to November 2021 of \$545,182, calculated as of September 2020.

When Vega was fired in January 2018, only \$16,628 had accumulated in his DROP account, and he was paid that amount because he was forced to retire from the City at that time. In lieu of receiving his expected large lump sum DROP payment of approximately \$485,000 in November 2021, Vega has received monthly pension benefits from the City of \$9,394 from February 2018 to the present as a result of his forced early retirement from the City, and these benefits are expected to continue until November 2021. Because the monthly pension benefits do not include interest and for other reasons, when they are subtracted from the lump sum DROP payment that Vega would have received had he been allowed to retire in November 2021, there is an additional economic loss of \$47,523, prior to reduction to present value. (\$485,000 less the aggregate of monthly pension benefits).

In addition, Vega would have been eligible to receive health insurance benefits from the City for five years commencing in November 2021 (his expected retirement date prior to his termination). As a result of the termination of his employment in January 2018, and to protect his and his family's health benefits, Vega was forced to elect this five-year benefit in February 2018, and these health benefits will be exhausted in February 2023, rather than in November 2026, had he been allowed to work for the

City until November 2021. This has resulted in a loss to Vega of 3.8 years' worth of health benefits, which according to Vega's expert, has a value of \$27,314.

Because Vega is claiming that Defendants' violations of the ADEA were willful, he seeks liquidated damages under the ADEA in an amount equal to his actual economic losses.

Vega also seeks compensatory damages under the PHRA, in an amount to be determined by the trier of fact, for pain and suffering, mental anguish, emotional distress, depression, loss of self-esteem and self-confidence, embarrassment, humiliation, and harm to his reputation resulting from the termination of his employment.

B. Plaintiff Whitehead

Whitehead's economic losses, past and future, have been calculated by his damages expert to be **\$358,610**. This figure includes lost wages from January 2018 through May of 2020; loss of the value of benefits under the City's DROP program; and loss of the value of employer-provided health benefits through May of 2025.

On May 9, 2016, Whitehead enrolled in the City's DROP program. In doing that, he agreed unconditionally to voluntarily retire from his employment with the City in four years, in May of 2020, in exchange for receiving a lump sum payment at the time of his retirement in the amount of approximately \$292,959. As noted above, when a City employee enters the DROP program, their pension is frozen and monthly pension benefits are paid into a DROP account, so that a lump sum, including interest, is paid at the time of the agreed upon retirement date. In Whitehead's case, he expected the monthly benefits to be paid into the account from May of 2016 until May of 2020, when he would have received the large lump sum payment.

Whitehead was sixty-four (64) years of age at the time he was fired in January 2018. At that time, he was earning an annual salary from the City of \$133,310. Notwithstanding his reasonable efforts to mitigate and to find comparable or substantially equivalent employment, Whitehead has been unemployed with no employment-related income from January 2018 to the present. In addition, it is not expected that Whitehead will be able to obtain comparable or substantially equivalent employment in the future. Whitehead's damages expert has determined, based upon Whitehead's annual earnings from the City, that from January 2018 through May of 2020, Whitehead had suffered a loss of income (back pay) in the amount of \$342,078.

When Whitehead was fired in January 2018, a total of \$111,835 had accumulated in his DROP account, and he was paid that amount because he was forced to retire from the City at that time. In lieu of receiving his expected large lump sum DROP payment in May 2020, Whitehead received monthly pension benefits from the City in the amount of \$5,521 from February 2018 to May 2020 due to his forced early retirement. Because these monthly pension benefits do not include interest and for other reasons, when they are subtracted from the lump sum DROP payment Whitehead would have received had he retired from the City in May 2020, there is an additional economic loss of \$34,265 (\$292,959 less the aggregate of monthly pension benefits).

In addition, Whitehead would have been eligible to receive health insurance benefits from the City for five years commencing in May 2020 (his expected retirement date prior to his termination). As a result of the termination of his employment in January 2018, and to protect his and his family's health benefits, Whitehead was forced

to elect this five-year benefit in February 2018, and these health benefits will be exhausted in February 2023, rather than in May 2025, had he been allowed to work for the City until May 2020. This has resulted in a loss to Whitehead of 2.3 years' worth of health benefits, which according to Whitehead's expert, has a value of \$16,532.

Whitehead seeks liquidated damages under the ADEA equal to the amount of his actual economic losses, as well as compensatory damages under the PHRA, in an amount to be determined by the trier of fact, for pain and suffering, mental anguish, emotional distress, depression, loss of self-esteem and self-confidence, embarrassment, humiliation, and harm to his reputation resulting from the termination of his employment.

IV. PLAINTIFFS' WITNESS LIST

A. Witnesses for Both Plaintiffs

Name	Present or last known address	Subject(s)
Carlos Vega	2216 S. Bancroft St., Philadelphia, PA 19145	Liability and damages
Joseph Whitehead, Jr.	3237 W. Queen Lane Philadelphia, PA 19129	Liability and damages
Mark Gilson	629 Charette Road Philadelphia, PA 19115	Liability
E. Marc Costanzo	8001 Colfax Street Philadelphia, PA 19136	Liability
Michelle Seidner	515 Gates Street Philadelphia, PA 19128	Liability
John P. Delaney, Jr.	Archdiocese of Philadelphia 222 N. 17 th Street Philadelphia, PA 19103	Liability

Name	Present or last known address	Subject(s)
Louis F. Tumolo	The Beasley Firm 1125 Walnut Street Philadelphia, PA 19107	Liability
Brian M. Zarallo	Pennsylvania Office of Attorney General 1000 Madison Avenue 3 rd Floor Norristown, PA 19403	Liability
Jennifer Selber	Pennsylvania Office of Attorney General 16 th Floor Strawberry Square Harrisburg, PA 17120	Liability
Charles Joseph (Joey) Grant	Philadelphia Gas Works (PGW) Philadelphia, PA	Liability
Brian J. McMonagle	1845 Walnut Street 19 th Floor Philadelphia, PA 19103	Liability
Fortunato N. Perri, Jr.	1845 Walnut St 19 th Floor Philadelphia, PA 19103	Liability
Robert Gamburg	1500 JFK Boulevard Suite 203 Philadelphia, PA 19102	Liability
Peter C. Bowers	441 N. 5 th Street 1 st Floor Philadelphia, PA 19123	Liability
Andrew C. Verzilli (expert)	411 North Broad Street Lansdale, PA 19447	Damages
Rachel Mitchell	Philadelphia District Attorney's Office (DAO) 3 S. Penn Square	Liability and damages

Name	Present or last known address	Subject(s)
	Philadelphia, PA 19107	
Arun Prabhakaran	Urban Affairs Coalition Philadelphia, PA	Liability
Lawrence Krasner	3 S. Penn Square Philadelphia, PA 19107	Liability

B. Additional Witnesses for Plaintiff Vega

Name	Present or last known address	Subject(s)
Ann Ponterio	8412 Shawnee Street Philadelphia, PA 19118	Liability
Edward F. McCann, Jr.	Montgomery County District Attorney's Office Norristown, PA 19403	Liability
Hon. Lynne Abraham (Ret.)	Archer Law Three Logan Square 1717 Arch Street Philadelphia, PA 19103	Liability
Barbara L. Christie	Commonwealth of Pennsylvania, Mechanicsburg, PA or 1800 Elmerton Avenue Harrisburg, PA 17110	Liability
David B. Webb	U.S. Attorney's Office 615 Chestnut Street Suite 1250 Philadelphia, PA 19106	Liability
Charles F. Gallagher, III	610 Hendren Street Philadelphia, PA 19128	Liability
Michael Giampietro	3 S. Penn Square Philadelphia, PA 19107	Liability

Name	Present or last known address	Subject(s)
Joseph A. Canuso	100 S. Broad Street Suite 1523 Philadelphia, PA 19110	Liability
Tariq El-Shabazz	100 S. Broad Street Suite 1525 Philadelphia, PA 19110	Liability
W. Fred Harrison, Jr.	924 Cherry Street Philadelphia, PA 19107	Liability
Lee Mandell	2 Penn Center Plaza, Suite 405 1500 John F Kennedy Blvd. Philadelphia, PA 19102	Liability
Thomas L. McGill, Jr.	1500 John F. Kennedy Blvd., Suite 520 Philadelphia, PA 19102	Liability
F. Michael Medway	3 Logan Square 1717 Arch Street, Suite 3640 Philadelphia, PA 19103	Liability
Gregory J. Pagano	1315 Walnut Street, 12th Floor Philadelphia, PA 19107	Liability
A. Charles Peruto, Jr.	2101 Pine Street Philadelphia, PA 19103	Liability
Gary S. Server	4843 Rising Sun Avenue Philadelphia, PA 19120	Liability
Samuel Stretton	103 S. High St West Chester, PA 19382	Liability
Nino V. Tinari	1528 Walnut Street Suite 1212 Philadelphia, PA 19102	Liability
Michael E. Wallace	222 S. 15 th Street Suite 1635 Philadelphia, PA 19109	Liability

Name	Present or last known address	Subject(s)
Joseph P. Zawrotny	123 S. Broad Street Suite 1812 Philadelphia, PA 19109	Liability
Hon. Jane Cutler Greenspan (Ret.)	JAMS 1717 Arch Street, Suite 3810 Philadelphia, PA 19103	Liability
Hon. Amanda Cooperman (Ret.)	1500 Walnut Street Philadelphia, PA 19102	Liability
Hon. Renee Cardwell Hughes (Ret.)	Philadelphia OIC 1231 N. Broad Street Philadelphia, PA	Liability
Hon. Peter Rogers (Ret.)	unknown	Liability
Hon. M. Teresa Sarmina (Ret.)	unknown	Liability
Kirk Handrich	U.S. Department of Justice 145 N. Street NE Washington, DC	Liability
Victoria Power	1037 S. Church Street Mt. Laurel, NJ 08054	Liability
Olivia Ann Caccoma	1502 Patrician Court Peekskill, NY 10566	Liability

C. Additional Witnesses for Plaintiff Whitehead

Name	Present or last known address	Subject(s)
Cathie Abookire	8576 Glen Campbell Road Philadelphia, PA 19128	Liability
Michael Barry, Esq.	Chester County DA's Office 201 W. Market St. West Chester, PA 19382	Liability

Name	Present or last known address	Subject(s)
Trevan Borum, Esq.	Borum, Burke, DiDonato, LLC 1500 JFK Blvd., Suite 900 Philadelphia, PA 19102	Liability
Amanda Bee	unknown	Liability
Erin Boyle, Esq.	Weitz & Lutzenberg 220 Lake Drive East, Suite 210 Cherry Hill, NJ 08002	Liability
Michael Cleary, Esq.	2727 N. 46 th Street Philadelphia, PA 19131	Liability
Elliot Cohen, Esq.	Louis T. Savino, P.C. 1500 JFK Blvd., Ste. 1516 Philadelphia, PA 19102	Liability
Hilary S. Cornell	3237 West Queen Lane Philadelphia, PA 19129	Liability and Damages
Jerry Daley	Police Headquarters 750 Race Street Philadelphia, PA 19106	Liability
James Dunlap	Police Headquarters 750 Race Street Philadelphia, PA 19106	Liability
Ronald Eisenberg, Esq.	PA Office of Attorney General 1600 Arch Street Philadelphia, PA 19103	Liability
Leon Goodman, Esq.	1515 Market Street Suite 1200 Philadelphia, PA 19102	Liability
Peter Grenier, Esq.	Zarwin, Baum 1818 Market Street, 13 th Floor Philadelphia, PA 19103	Liability
Eric Henson, Esq.	United States Attorney's Office EDPA	Liability

Name	Present or last known address	Subject(s)
	615 Chestnut St., Suite 1250 Philadelphia, PA 19106	
Deborah Hoffman, Esq.	Philadelphia DA's Office 3 South Penn Square Philadelphia, PA 19107	Liability
Stacy Hughes, Esq.	Law Department City of Philadelphia 1515 Arch Street Philadelphia, PA 19102	Liability
Eileen Hurley, Esq.	Eileen J. Hurley, LLC 1518 Walnut St. Suite 905 Philadelphia, PA 19102	Liability
Hon. Sheldon Jelin	Phila. Parking Authority 2415 S. Swanson Street Philadelphia, PA 191	Liability
Shaka Johnson, Esq.	Shaka Johnson, LLC 1333 Christian St. Philadelphia, PA 19147	Liability
Joseph McGettigan, Esq.	McAndrews Law Office, P.C. 30 Cassatt Avenue Berwyn, PA 19312	Liability
Michael McGovern, Esq.	21 N. 15 th Street Del Haven, New Jersey 08251	Liability
George Mosee, Esq.	130 Beth Drive Philadelphia, PA 19115	Liability
Brendan O'Malley	PA Office of Attorney General 1000 Madison Ave., 3 rd Floor Norristown, PA 19403	Liability
Hon. Paul P. Panepinto	806 Callowhill Street Philadelphia, PA 19130	Liability
Hon. Louis K. Presenza	Two Penn Center 1500 JFK Blvd., Suite 1205	Liability

Name	Present or last known address	Subject(s)
	Philadelphia, PA 19102	
Dino Privitera, Esq.	The Privitera Law Firm, LLC 123 S. Broad Street, Suite 2170 Philadelphia, PA 19109	Liability
Erlande Quinde	1316 Rice Hill Circle Antioch, TN 37013	Liability
Namratha Ravikant, Esq.	333 Mount Elliot Street Detroit, Michigan 48207	Liability
Tanner Rouse, Esq.	Delaware County DA's office Delaware County Courthouse 201 W. Front St. Media, PA 19063	Liability
Louis Savino, Esq.	Louis T. Savino, P.C. 1500 JFK Blvd., Suite 1516 Philadelphia, PA 19102	Liability
Richard Sax, Esq.	240 E. Highland Ave. Philadelphia, PA 19118	Liability
Kathy Stark, Esq.	U.S. Attorney's Office EDPA 615 Chestnut Street, Suite 1250 Philadelphia, PA 19106	Liability
Edward Tolliver, Esq.	Police Headquarters 750 Race Street Philadelphia, PA 19106	Liability
Gary White	Police Headquarters 750 Race Street Philadelphia, PA 19106	Liability
Thomas Wixted, Esq.	Police Headquarters 750 Race Street Philadelphia, PA 19106	Liability

Name	Present or last known address	Subject(s)
Anthony Wzorek, Esq.	U.S. Attorney's Office EDPA 615 Chestnut Street, Suite 1250 Philadelphia, PA 19106	Liability
Thomas Zaleski, Esq.	PA Office of Attorney General 1000 Madison Ave., 3 rd Floor Norristown, PA 19403	Liability

V. PLAINTIFFS' SCHEDULE OF EXHIBITS

A. Documents Pertinent to Both Plaintiffs

No.	Description	Date	Bates
P-1	Article published by The Intercept titled "Meet Philadelphia's Progressive Candidate for DA: An Interview with Larry Krasner"	5/17/2017	LEVIN 161-170 (Mitchell-9)
P-2	Transcript of excerpts of interview given by Defendant Krasner to Jacobin Radio	10/7/2017	WHITEHEAD 110-111 (Mitchell-11)
P-3	Transcript of excerpts of interview given by Defendant Krasner to WHYY radio	10/24/2017	WHITEHEAD 113-114 (Mitchell -11)
P-4	Article published by WBUR "Here & Now" titled "Philadelphia DA Wants to Dismantle Mass Incarceration from the Inside Out"	4/18/2018	WHITEHEAD 011-020
P-5	Audio recordings of interviews given by Defendant Krasner to Jacobin Radio, WHYY, WURD, WBUR, and "The Voice of San Diego"	10/7/2017 10/24/2017 10/24/2017 4/18/2018 5/25/2018	PV-000131 (disk)
P-6	Memorandum from Kelley Hodge to members of the District Attorney (DAO) with attached letter from Defendant	11/9/2017	WHITEHEAD 030-031

No.	Description	Date	Bates
	Krasner to Attorneys and Staff of the DAO		
P-7	E-mail from Anna Adams to Arun Prabhakaran et al re: Personnel data	12/7/2017	CITY LK 001-002; CITY0551-0552
P-8	Memo to Rachel Mitchell from Arun Prabhakaran re: Separations	1/5/2018	CITY 0413-0414
P-9	Memo to Rachel Mitchell from Arun Prabhakaran re: Separations with handwritten notes	1/5/2018	PV-000087-000088
P-10	List of employee separations	1/12/2018	CITY621
P-11	List of retirees	1/12/2018	CITY623
P-12	Announcement from Arun Prabhakaran to Staff of the DAO	1/12/2018	PV-000237-000238
P-13	Chart reflecting names, dates of birth, and positions of employees terminated in 1/2018	1/12/2018	CITY 0415-0416
P-14	Charts produced by Defendant City in response to court order dated 3/2/2020, verified by Rachel Mitchell	3/11/2020 and 3/16/2020, with verification dated 3/17/2020	PK-00073-00079
P-15	Press Release issued by DAO	9/9/2019	PV-000137-000140
P-16	Defendant City's Response to Vega's Interrogatories	1/3/2020	PM-00021-00028
P-17	Defendant City's Response to Whitehead's Interrogatories	1/3/2020	PM-00045-00052
P-18	Defendant City's Response to Vega's Request for Production of Documents	1/3/2020	PM-00029-00044

No.	Description	Date	Bates
P-19	Defendant City's Response to Whitehead's Request for Production of Documents	1/3/2020	PM-00053-00068
P-20	Defendant Krasner's Response to Vega's Interrogatories	1/3/2020	PK-00021-00029
P-21	Defendant Krasner's Response to Whitehead's Interrogatories	1/3/2020	PK-00040-00048
P-22	Defendant Krasner's Response to Vega's Request for Production of Documents	1/3/2020	PK-00030-00039
P-23	Defendant Krasner's Response to Whitehead's Request for Production of Documents	1/3/2020	PK-00049-00059
P-24	Defendant City's Responses to Plaintiffs' First Set of Requests for Admission	7/22/2020	N/A
P-25	PHRC Complaint of Vega	6/26/2018	PV-000014-000020
P-26	Answer of Defendants to PHRC Complaint of Vega	12/21/2018	CITY 0153-0164
P-27	PHRC Complaint of Whitehead	6/25/2018	WHITEHEAD 045-062
P-28	Answer of Defendants to PHRC Complaint of Whitehead	12/21/2018	CITY 0173-0183
P-29	Verified Statement of Defendant Krasner re: Vega	12/12/2018	CITY0170-0172
P-30	Verified Statement of Defendant Krasner re: Whitehead	12/12/2018	CITY0189-0191
P-31	Declaration of John P. Delaney, Jr.	10/21/2020	PV-00227-00233
P-32	Declaration of Louis F. Tumolo	10/4/2020	PV-00023-00026

B. Additional Documents Pertinent to Plaintiff Vega

No.	Description	Date	Bates
P-33	Performance Appraisal of Vega	7/8/1993	CITY0130
P-34	Performance Appraisal of Vega	6/24/1994	CITY0129
P-35	Performance Appraisal of Vega	7/31/1997	CITY0126-0127
P-36	Performance Appraisal of Vega	10/1/1998	CITY0119-0125
P-37	Performance Appraisal of Vega	3/31/2000	CITY0113-0118
P-38	Performance Appraisal of Vega	6/17/2002	CITY0109-0112
P-39	Performance Appraisal of Vega	6/2/2003	CITY0107-0108
P-40	Performance Appraisal of Vega	6/28/2004	CITY0105-0106
P-41	Performance Appraisal of Vega	6/14/2013	CITY0103-0104
P-42	Performance Appraisal of Vega	6/5/2014	CITY0099-0102
P-43	Performance Appraisal of Vega	5/26/2015	CITY0096-0098
P-44	Performance Appraisal of Vega	5/26/2016	CITY0093-0095
P-45	Performance Appraisal of Vega	5/17/2017	CITY0090-0092
P-46	Letter from DA Lynne Abraham to Vega re: merit raise	12/19/1997	CITY0072
P-47	Letter from DA Lynne Abraham to Vega re: merit increase	6/6/2000	CITY0070
P-48	Memorandum from DA Lynne Abraham to Vega re: merit increase	11/5/2007	CITY0068
P-49	Memo from DA Lynne Abraham to Vega re: merit increase	9/15/2018	CITY0066
P-50	Vega's DROP Application with attached printout	2/1/2016 and 2/5/2016	PV-000002- 000003

No.	Description	Date	Bates
P-51	Letter from City Board of Pensions & Retirement to Vega re: DROP with attached spreadsheet	2/9/2016	PV-000004-000005
P-52	Letter from Rachel Mitchell to Vega re: separation information	1/9/2018	PV-000007-000008
P-53	E-mail from Stephen Martin to Vega re: Pension Application	1/12/2018	PV-000009
P-54	E-mail exchange between Stephen Martin, Vega and Michele Ford	1/12/2018	PV-000010-000011
P-55	Letter from Michele Ford to Vega	1/12/2018	PV-000012
P-56	Statement of Earnings and Deductions of Vega	1/19/2018	PV-000013
P-57	Employment record of Vega reflecting job titles, salary adjustments and promotions as employee of the City	1/12/2018	CITY0417-0419
P-58	Employee Service History Record for Vega	1/12/2018	CITY0064
P-59	Report of Separation of Vega	1/12/2018	CITY0046
P-60	Terminal Leave Audit Worksheet for Separating Employee with attachment re: Vega	1/12/2018	CITY0047-0048
P-61	DROP Distribution Selection Form for Vega with attached printout	1/19/2018 and 2/11/2018	CITY0399-0400
P-62	Computation of Pension Payable, Municipal Retiree Election Application, Computational Worksheet, and Final Compensation and Pension Contribution Review re: Vega	2/1/2018	CITY0401-0404
P-63	Benefit Application of Vega with attached Employee Service History Record	1/19/2018	CITY0405-0406
P-64	Survivor Option Election Form of Vega	1/19/2018	CITY0407-0408

No.	Description	Date	Bates
P-65	Printouts re: Pension and DROP payment history of Vega	12/12/2019	CITY0410-0412
P-66	Philadelphia Board of Pensions and Retirement Summary Plan Description	5/2013	N/A
P-67	Letter from City Board of Pensions and Retirement to Vega re: DROP lump sum benefit	N/A – not yet received	N/A
P-68	Resumés of Vega	1/2018	PV-000089-000090
P-69	E-mail exchange between Vega, Melissa Piccoli, and Brooke Lynn Johnson re: open opportunities with resumé of Vega	1/10/2018 and 1/11/2018	PV-000091-000094
P-70	Letter from Vega to Attorney General Josh Shapiro	2/21/2018	PV-000095
P-71	Letter from Vega to District Attorney Kevin Steele	7/1/2018	PV-000096
P-72	Letter from Vega to DA Thomas Hogan	7/1/2018	PV-000097
P-73	Letter from Vega to DA Katayoun Copeland	7/1/2018	PV-000098
P-74	Letter from Vega to AG Josh Shapiro	1/8/2019	PV-000099
P-75	Letter form Vega to DA Kevin Steele	1/10/2019	PV-000100
P-76	Letter from Vega to DA Thomas Hogan	1/10/2019	PV-000101
P-77	Letter from Vega to DA Katayoun Copeland	1/10/2019	PV-000102
P-78	Letter from Vega to AG Josh Shapiro	12/4/2019	PV-000103
P-79	Letter from Vega to DA Kevin Steele	12/4/2019	PV-000104
P-80	Letter from Vega to DA Thomas Hogan	12/4/2019	PV-000105

No.	Description	Date	Bates
P-81	Letter from Vega to DA Katayoun Copeland	12/4/2019	PV-000106
P-82	Letter from Vega to DA Matthew Weintraub	12/4/2019	PV-000107
P-83	Letter from Vega to AG Josh Shaprio	7/17/2020	PV-000142
P-84	Letter from Vega to DA Kevin Steele	7/17/2020	PV-000143
P-85	Letter from Vega to DA Deb Ryan	7/17/2020	PV-000144
P-86	Letter from Vega to DA Jack Stollsteimer	7/17/2020	PV-000145
P-87	Letter from Vega to DA Matthew Weintraub	7/17/2020	PV-000141
P-88	E-mail from John Delaney to Vega	1/29/2018	PV-000132-000133
P-89	E-mail exchange between Mary Maran, Edgar Jaramillo and Edward Cameron re: <u>Commonwealth v. Pitts</u>	3/29/2018 and 3/30/2018	PV-000134-000136
P-90	E-mail exchange between Rivera family and Defendant Krasner re: Vega	1/2018	CITY LK 0003-0005
P-91	Declaration of Ann Ponterio	9/1/2020	PV-000167-000171
P-92	Declaration of Victoria Power	8/30/2020	PV-000172-000173
P-93	Transcript of trial of <u>Commonwealth v. Scott and Muhammed</u>	Various dates from 11/2016 to 12/2016	N/A
P-94	Opinion of Superior Court of Pennsylvania in <u>Commonwealth v. Scott</u> , 212 A.3d 1094, 2019 PA Super 185 (June 11, 2019)	6/11/2019	PV-000174-000192
P-95	Opinion of Superior Court of Pennsylvania in <u>Commonwealth v. Muhammed</u> , 2009 WL 2432100 (June 11, 2019), with attached Opinion of Honorable Glen Bronson dated 6/12/2017	6/11/2019	PV-000193-000222

No.	Description	Date	Bates
P-96	Order of Supreme Court of Pennsylvania in <u>Commonwealth v. Scott</u>	12/24/2019	PV-000223
P-97	Expert report of Andrew C. Verzilli with attached Tables 1 and 2	9/17/2020	N/A
P-98	Curriculum vitae of Andrew C. Verzilli, MBA	undated	N/A

C. Additional Documents Pertinent to Plaintiff Whitehead

No.	Description	Date	Bates
P-99	Report of Separation of Whitehead	1/12/2018	WHITEHEAD 024
P-100	Letter to Whitehead from Mitchell	1/10/2018	WHITEHEAD 025-026
P-101	Email to Mitchell from Whitehead	1/11/2018	CITY0010
P-102	Payroll Master Record	1/8/2018	CITY0008
P-103	Payroll Leave Balance	1/8/2018	CITY0009
P-104	Payroll Leave Balance	1/11/2018	CITY0012
P-105	Employee Service History Record for Whitehead	1/12/2018	CITY0016
P-106	Employment Record of Whitehead reflecting job titles, salary adjustments and promotions as employee of the City	1/12/2018	CITY0420-0422
P-107	Earnings and Deductions Statement	2/2/2018	WHITEHEAD 027
P-108	Whitehead's DROP Application with attached printout	1/28/2016	CITY0379-0382
P-109	Letter to Whitehead from Board of Pensions and Retirement	Undated	WHITEHEAD 028
P-110	Letter to Whitehead from Board of Pensions and Retirement	2/2/2016	WHITEHEAD 029

No.	Description	Date	Bates
P-111	DROP Distribution Selection Form	1/19/2018	CITY0386-0392
P-112	Board of Pensions Payment History	12/12/2019	CITY0396-0397
P-113	Board of Pensions DROP Payment History	12/12/2019	CITY0398
P-114	Email from Hodge to Members of DAO enclosing Letter from DA-Elect Lawrence Krasner	11/9/2017	WHITEHEAD 030-031
P-115	Payroll Master Record	9/4/2015	WHITEHEAD 032
P-116	Board of Pensions Active Employee Pension Estimates	9/4/2015	WHITEHEAD 033
P-117	Board of Pensions Active Employee Pension Estimates	1/25/2016	WHITEHEAD 034
P-118	Whitehead Pension Estimate	3/20/2015	WHITEHEAD 035
P-119	Whitehead DROP Application	1/28/2016	WHITEHEAD 036-038
P-120	Retirement Benefits Plan 87		WHITEHEAD 138-154
P-121	Pensions 101	12/14/2017	WHITEHEAD 155-174
P-122	Resume of Whitehead	1/2018	WHITEHEAD 175-176
P-123	Emails between Whitehead and Sozi Tulante	1/8/2018-1/18/2018	WHITEHEAD 177
P-124	Emails between Whitehead and Richard Ross	1/8/2018	WHITEHEAD 178
P-125	Letter from Whitehead to Krasner	1/2/2018	WHITEHEAD 180
P-126	Letter from Whitehead to Delaware County District Attorney's Office	12/18/2019	WHITEHEAD 181-183
P-127	Letter from Whitehead to PA Office of Attorney General	12/18/2019	WHITEHEAD 184-186

No.	Description	Date	Bates
P-128	Letter from Whitehead to Montgomery County District Attorney's Office	12/18/2019	WHITEHEAD 187-189
P-129	Letter from Whitehead to Bucks County District Attorney's Office	12/18/2019	WHITEHEAD 190-192
P-130	Letter from Whitehead to William McSwain	12/19/2019	WHITEHEAD 193-195
P-131	Performance Appraisal of Whitehead	5/14/2009	WHITEHEAD 196-197
P-132	Performance Appraisal of Whitehead	5/26/2016	WHITEHEAD 334-336
P-133	Performance Appraisal of Whitehead	5/26/2016	WHITEHEAD 331-333
P-134	Performance Appraisal of Whitehead	5/11/2017	WHITEHEAD 198-200
P-135	Letter from DA Lynne Abraham to Whitehead re: merit promotion	8/8/1994	WHITEHEAD 209
P-136	Letter from DA Lynne Abraham to Whitehead re: perfect attendance	3/29/1995	CITY0021
P-137	Letter from DA Lynne Abraham to Whitehead re: increase in salary	6/9/1995	WHITEHEAD 208
P-138	Letter from DA Lynne Abraham to Whitehead re: perfect attendance	6/7/1996	CITY0022
P-139	Letter from DA Lynne Abraham to Whitehead re: merit promotion	10/8/1996	WHITEHEAD 207
P-140	Letter from DA Lynne Abraham to Whitehead re: merit promotion	12/19/1997	WHITEHEAD 206
P-141	Letter from DA Lynne Abraham to Whitehead re: merit promotion	3/31/1999	WHITEHEAD 205
P-142	Letter from DA Lynne Abraham to Whitehead re: merit increase	6/6/2000	CITY0018
P-143	Letter from DA Lynne Abraham to Whitehead re: merit increase	8/8/2002	WHITEHEAD 204

No.	Description	Date	Bates
P-144	Letter from DA Lynne Abraham to Whitehead re: promotion	9/6/2002	WHITEHEAD 203
P-145	Letter from DA Lynne Abraham to Whitehead re: perfect attendance	4/17/03	CITY0023
P-146	Letter from DA Lynne Abraham to Whitehead re: merit increase	8/11/2003	WHITEHEAD 202
P-147	Letter from DA Lynne Abraham to Whitehead re: perfect attendance	5/17/2004	CITY0024
P-148	Letter from DA Lynne Abraham to Whitehead re: merit increase	10/21/2005	WHITEHEAD 201
P-149	Letter from DA Lynne Abraham to Whitehead re: perfect attendance	1/10/2008	CITY0025
P-150	Letter from DA Lynne Abraham to Whitehead re: perfect attendance	1/6/2009	CITY0026
P-151	Chart re: Juvenile Lifers Record of Offers	1/2/2018	WHITEHEAD 210-215
P-152	Proposed Resentencing Offers	Miscellaneous dates 2016, 2017	WHITEHEAD 216-288
P-153	Graduation Ceremony Videos	1/26/2005	N/A
P-154	Expert Report of Andrew C. Verzilli with attached Table 1 and List of Documents Reviewed	9/17/2020	N/A

D. Deposition Transcripts

No.	Description	Date	Bates
P-155	Deposition Transcript of Lawrence Krasner with exhibits (and video)	9/16/2020	N/A
P-156	Deposition Transcript of Rachel Mitchell with exhibits	8/28/2020	N/A

P-157	Deposition Transcript of Arun Prabhakaran with exhibits	9/1/2020	N/A
P-158	Deposition Transcript of Brian Zarallo with exhibits	6/25/2020	N/A
P-159	Deposition Transcript of Jennifer Selber with exhibits	7/9/2020	N/A
P-160	Deposition Transcript of Michael Giampietro with exhibits	9/8/2020	N/A

In addition, Plaintiffs reserve the right to use exhibits for impeachment purposes and for purposes of rebuttal, as well as admissible documents identified by Defendants in their Schedule of Exhibits.

VI. ESTIMATE OF TRIAL TIME

8 to 10 days for the entire case.

VII. OTHER MATTERS

1. The parties have agreed, subject to the Court's approval, to defer the formal exchange of their trial exhibits until a later date, following a ruling on Defendants' pending motions for summary judgment. Plaintiffs have identified and numbered their exhibits in this Pretrial Memorandum, and these exhibits have been exchanged in discovery, and are in the possession of Defendants.

2. Plaintiffs are unable at this time to object to the admissibility of any of Defendants' trial exhibits since Defendants' Pretrial Memorandum is not due to be filed until November 23, 2020. Plaintiffs request that the Court set a date for Plaintiffs to assert any objections to Defendants' exhibits.

3. Plaintiffs request that the parties be allowed additional time beyond December 7, 2020, to submit the stipulation of uncontested facts, proposed jury voir dire questions, proposed jury instructions, motions in limine, trial memoranda, and a joint statement of the case. Paragraph 12 of the Third Amended Scheduling Order states that these submissions are due seven days after the Final Pretrial Conference “[u]nless otherwise ordered.”

4. The parties are not presently aware of any witnesses who will be unavailable to testify at trial, necessitating the offering of deposition testimony. If a witness is unavailable to testify, or if Plaintiffs want to offer any deposition testimony into evidence, Plaintiffs propose that the parties either take a trial deposition or work together to prepare the necessary deposition transcript designations.

5. Plaintiff Whitehead objects to the admissibility of opinion testimony from lay witness Robert Listenbee. Listenbee’s lay opinion testimony, as stated in his deposition, relates to matters not known to or considered by Krasner when he made the decision to terminate Plaintiff Whitehead’s employment.

6. Plaintiff Vega objects to the admissibility of opinion testimony of lay witness Anthony Voci. Prior to Voci’s deposition, Defendants had stated that with respect to Plaintiff Vega, Voci “may offer opinion testimony about the qualifications of the attorneys in the [DAO] during DA Krasner’s tenure.” However, at Voci’s deposition, counsel for Defendants questioned him regarding Plaintiff Vega’s ethics, integrity, and conduct in the trial that Plaintiff Vega had against Krasner. Based on the previous FRE 701 disclosures, Plaintiff Vega’s counsel was unfairly surprised and unprepared to examine Voci on these issues. As a remedy, Plaintiffs propose that if Defendants’ motions for

summary judgment are denied, Plaintiff Vega be allowed to take Voci's deposition again prior to trial.

/s/ Robert A. Davitch
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Date: November 16, 2020

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

<u>CARLOS VEGA</u>	:	CIVIL ACTION
and	:	
JOSEPH WHITEHEAD, JR.	:	NO. 19-4039
	:	
Plaintiffs,	:	JURY TRIAL DEMANDED
v.	:	
	:	
CITY OF PHILADELPHIA	:	
and	:	
LAWRENCE S. KRASNER	:	
<u>Defendants.</u>	:	

CERTIFICATE OF SERVICE

I, Sidney L. Gold, hereby certify that Plaintiffs' Pretrial Memorandum has been served via electronic mail and electronic service of the Court, and is available for viewing and downloading on the Court's ECF system, upon the following counsel of record:

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/s/Sidney L. Gold

Date: November 16, 2020